

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV 17-5261-VBF (KS) Date: November 20, 2018

Title *Timothy Booten v. R.J. Rackley*

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Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Gay Roberson  
Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioners:

Attorneys Present for Defendants:

**Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL**

On July 17, 2017, Petitioner, a California state prisoner proceeding *pro se*, filed a Petition For Writ Of Habeas Corpus (“Petition”). (Dkt. No. 1.) On July 26, 2018, the Court ordered Respondent to respond to the Petition and set deadlines for filing, *inter alia*, a Motion to Dismiss and an Opposition to any Motion to Dismiss. (Dkt. No. 19.) On October 4, 2018, Respondent filed a Motion to Dismiss (the “Motion”) on the grounds that the Petition is wholly unexhausted. (Dkt. No. 23.) Pursuant to the Court’s July 26, 2018 Order, Petitioner’s Opposition to that Motion was due within 30 days of the service of the Motion – that is, no later than November 3, 2018. (*See* Dkt. No. 19 at 3.)

More than two weeks have now passed since the date on which Petitioner’s opposition was due, and Petitioner has not filed a response to the Motion to Dismiss. Local Rule 7-12 states that a party’s failure to file a required document such as an opposition to a motion “may be deemed consent to the granting [ ] of the motion.” Further, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, an action may be subject to involuntary dismissal if a Petitioner “fails to prosecute or to comply with these rules or a court order.” Thus, the Court could properly recommend dismissal of the action for Petitioner’s failure to oppose the Motion To Dismiss and to timely comply with the Court’s orders.

However, in the interests of justice, Petitioner is **ORDERED TO SHOW CAUSE on or before December 11, 2018** why the action should not be dismissed under Local Rule 7-12 and Rule 41(b) of the Federal Rules of Civil Procedure. Petitioner’s response

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to this OSC must include either: (1) a complete and detailed opposition (in a manner fully complying with the Local Rules) to the Motion to Dismiss; or (2) a request for an extension to file the Opposition accompanied by a sworn declaration (not to exceed 3 pages) establishing good cause for Petitioner’s failure to timely respond to the Motion to Dismiss.

Alternatively, Petitioner may discharge this Order and dismiss this case by filing a signed document entitled a “Notice of Voluntary Dismissal” requesting the voluntary dismissal of the action without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

**Petitioner is cautioned that his failure to timely comply with this order will lead to a recommendation of dismissal based on Local Rule 7-12 and Rule 41 of the Federal Rules of Civil Procedure.**

**Initials of Preparer**

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